

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

SUPERIOR COURT

DONALD J. LUONGO :

v. :

THORNTON AUTO :
SALES, INC. :

P.M. No. 2001-1321

DECISION

SILVERSTEIN, J. Before the Court for determination is the issue of whether municipal licensing is necessary for the lawful operation of an auto body repair business and an auto sales business in the Town of Johnston (Town), or whether the State of Rhode Island (State) has exclusive authority to license the businesses.

FACTS AND TRAVEL

Thornton Auto Sales (Thornton) is an auto body repair shop and auto sales business operating in the Town of Johnston since 1981. Thornton went into Receivership in April, 2001. The Receiver entered into a Purchase and Sale Agreement (Agreement) with Ciara Auto Sales (Ciara) for the sale of the real estate and assets of Thornton, including all the auto body and auto sales licenses belonging to Thornton. This sale was contingent on Ciara receiving from the Town of Johnston and from the State all the necessary approvals to operate a business of this type.

The Town of Johnston contends that no business may operate in the Town without a municipal license to do so. The Town refuses to grant operating approval to Ciara, claiming that the municipal license Ciara received from Thornton expired in May,

2000 resulting in its present invalidity. Ciara asserts, however, that the State licensing and regulating authorities have exclusive authority in the area of business licensing, rendering municipal licensing unnecessary and irrelevant to the auto businesses in question here.

Before this Court is the issue of whether the Town of Johnston has the authority to issue a binding municipal license or whether the State has exclusive authority to license businesses, rendering the issuance of an operating license by the Town of Johnston moot in this case.

DISCUSSION

In Rhode Island, the State Department of Business Regulation regulates and licenses the auto repair business. See G.L. 1956 § 5-38-2. The auto sales business is regulated and licensed by the State Department of Administration. See G.L. 1956 § 31-5-2.

The Rhode Island Supreme Court has held that the authority to regulate occupations and businesses belongs to the State through the legislature. See Newport Amusement Co., Inc. v. Maher, 166 A.2d 216, 218 (1960). “The power to regulate occupations and businesses by licensing provisions and by imposing a licensing fee is an attribute of sovereignty. It is not an incident of municipal administration and may not be exercised by municipalities except where it is lawfully delegated to them in particular instances expressly or by necessary implication.” Id. The Court went on to state that the right to self-government is preserved for towns where the issue in question is a local matter. See id. at 218. “Licensing is definitely not a local matter. The power to license

has never been exercised by the municipalities of this state as far as we are aware except by express authorization of the legislature.” Id.

The Town of Johnston has adopted a Home Rule Charter pursuant to Article XXVIII of amendments to the Rhode Island Constitution. The Town contends that due to adoption of its Home Rule Charter, it has the authority to regulate and license businesses located within its jurisdiction. However, “the power of home rule therein granted to any city or town which adopts a charter is narrowly limited to the enactment or amendment of local laws relating to its property, affairs and government” Newport Amusement Co., Inc. v. Maher, 166 A.2d at 218. As discussed above, licensing is not a strictly municipal matter. Rather, it is of state-wide concern. See id. Thus the authority to license is reserved to the legislature unless it is statutorily granted by the General Assembly to a specific city or town.

The Town of Johnston has presented no evidence to show that the power to regulate and license businesses within its borders has been statutorily granted to it by the legislature. The Town presents nothing to show that its licensing power is valid in light of the State’s exclusive power to regulate and license businesses. Further, there is nothing before this Court indicating that the Town’s adoption of a Home Rule Charter vested in it the authority to license businesses.

After careful review of the arguments submitted in this case, as well as the clearly-established case law, this Court finds that the continued operation of the auto repair business and auto sales business does not require municipal licensing by the Town of Johnston. Said businesses are validly licensed by the relevant State licensing

authorities, namely the Department of Business Regulation and the Department of Administration.